UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PRICE-SIMMS, INC.	)
	)
Petitioner/Cross-Respondent	)
	)
v.	) **Nos. 15-1457, 16-1010**
	)
NATIONAL LABOR RELATIONS BOARD	)
	)
Respondent/Cross-Petitioner	)
	)
and	)
	)
RICHARD VOGEL	)
	)
Intervenor	)
_____	)

MOTION OF THE NATIONAL LABOR RELATIONS BOARD TO REMOVE THIS CASE FROM ABEYANCE AND SUMMARILY GRANT THE COMPANY'S PETITION FOR REVIEW AND DENY THE BOARD'S CROSS-APPLICATION FOR ENFORCEMENT OF ITS ORDER

To the Honorable, the Judges of the United States Court
of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, by its Deputy Associate General

Counsel, respectfully moves this Court to remove this case from abeyance and

summarily grant the Company's petition for review and deny the Board's cross-

application for enforcement. In support of this motion, the Board shows:

1.   In the Decision and Order under review, the Board found that Price-

Simms, Inc., d/b/a Toyota Sunnyvale ("the Company") had violated the National

Labor Relations Act by maintaining and enforcing an arbitration agreement barring employees from concertedly pursuing work-related claims in any forum, arbitral or judicial. 363 NLRB No. 52 (Nov. 30, 2015). In doing so, the Board applied the rule set forth in *Murphy Oil*, *USA, Inc.*, 361 NLRB 774 (2014), *enforcement denied in relevant part*, 808 F.3d 1013 (5th Cir. 2015), *cert. granted*, No. 16-307 (Jan. 13, 2017).

2.   On January 23, 2017, the Court placed this case in abeyance pending the Supreme Court's decision in *Murphy Oil*. Prior to that time, the parties had briefed this case.

3.   On May 21, 2018, the Supreme Court issued its decision in *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444 (U.S. May 21, 2018), holding that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims.[1] The Board acknowledges that under that decision, the Decision and Order in this case is no longer enforceable. The Board therefore consents to the summary grant of the Company's petition for review, and the summary denial of the Board's cross-application for enforcement, of the Board's Order.

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[1] The Court issued *Epic Systems* together with *Murphy Oil*, No. 16-307, and *Ernst & Young LLP* v. *Morris*, No. 16-300.

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WHEREFORE, the Board respectfully moves this Court to remove this case

from abeyance, and summarily grant the Company's petition for review and deny

the Board's cross-application for enforcement of the Board's Order.

Respectfully submitted,

/s/Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, S.E.
Washington, D.C. 20570

Dated at Washington, D.C.
this 22nd day of May 2018

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)	
RICHARD VOGEL)	
)	
Intervenor)	
_____)	

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board

certifies that its motion contains 365 words of proportionally-spaced, 14-point

type, and that the word processing system used was Microsoft Word 2010.

s/ Linda Dreeben
Linda Dreeben
Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

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	)
RICHARD VOGEL	)
	)
Intervenor	)
_____	)

CERTIFICATE OF SERVICE

I certify that on May 22, 2018, the foregoing motion was filed with the Clerk

of the Court for the United States Court of Appeals for the District of Columbia

Circuit by using the appellate CM/ECF system, and that all counsel are registered

CM/ECF users.

         s/ Linda Dreeben
        Linda Dreeben
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        National Labor Relations Board
        1015 Half Street, SE
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